IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

LOUIS HAMMOND, Plaintiff, vs. SCHATZ UNDERGROUND CABLE, Defendant.	)	No. 01-1107

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR RULE 11 SANCTIONS

Plaintiff Louis Hammond, *pro se*, has filed this action against his former employer, Schatz Underground Cable, alleging that Defendant unlawfully discriminated against him on the basis of his race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended ("Title VII"), and 42 U.S.C. § 1981. Defendant has filed a motion for summary judgment and a motion for Rule 11 sanctions. Plaintiff has not responded to the motions. For the reasons set forth below, Defendant's motion for summary judgment is GRANTED, and Defendant's motion for Rule 11 sanctions is DENIED as moot.

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. To prevail on a motion for summary judgment, the moving party has the burden of showing the "absence of a genuine issue of material fact as to an essential element of the nonmovant's case." Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989). The moving party may support the motion with affidavits or other proof or by exposing the lack of evidence on an issue for which the nonmoving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The opposing party may not rest upon the pleadings but, "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

"If the defendant . . . moves for summary judgment . . . based on the lack of proof of a material fact, . . . [t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The court's function is not to weigh the evidence, judge credibility, or in any way determine the truth of the matter, however. Anderson, 477 U.S. at 249. Rather, "[t]he inquiry on a summary judgment motion . . . is . . . 'whether the evidence presents a sufficient disagreement to require submission to a [trier of fact] or whether it is so one-sided that one party must prevail as a matter of law.'" Street, 886 F.2d at 1479 (quoting Anderson, 477 U.S. at 251-52). Doubts as to the existence of a genuine issue for trial are resolved against the moving party. Adickes v. S. H. Kress & Co., 398 U.S. 144, 158-59 (1970).

If a party does not respond to a motion for summary judgment, the Federal Rules of Civil Procedure provide that "summary judgment, if appropriate, shall be entered against him." Fed. R. Civ. P. 56(e). The fact that Plaintiff did not respond does not require granting Defendant's motion. However, if the allegations of the complaint are contravened by Defendant's affidavits and Defendant is entitled to judgment as a matter of law on those facts, then summary judgment is appropriate. Wilson v. City of Zanesville, 954 F.2d 349, 351 (6th Cir. 1992).

In the complaint, Plaintiff alleges that he was discriminated against on the basis of his race and retaliated against by Defendant. Complaint at pp. 1-2. Specifically, Plaintiff alleges that, despite the "excellence" of his performance on the job as an hourly worker, he was never promoted even though others who were hired after him were promoted. Id. at p. 3. Plaintiff also alleges that black employees were disciplined more harshly than white employees and that Defendant had racially discriminatory hiring, transfer, and promotion policies. Id. at 3-4. However, in his deposition, Plaintiff testified that his claims against Defendant are not related to any general allegedly discriminatory practices or policies of

Defendant but, instead, relate to his own treatment by Defendant. Plaintiff's Depo. at pp. 115-16.

Although the complaint alleges that Plaintiff was employed by Defendant for "approximately eight months," Plaintiff's charge of discrimination states that he was employed from April 12, 1999, until April 28, 1999. Defendant's Exhibit C. The affidavit of Raymond Vance, Defendant's general foreman during the events in question, states that Plaintiff "worked for no longer than a few weeks in April 1999" as a temporary employee. Defendant's Exhibit B. In his deposition, Plaintiff testified that he could not recall the date that he was terminated although he "thought" that he had worked "longer than a month." Plaintiff's Depo. at 47-48. Plaintiff "thought" that he worked "around in the area of two months or more." Id. at 49.

Defendant contends that, because Plaintiff alleged only discriminatory discharge in his charge of discrimination, the EEOC was not given the opportunity to investigate on-the-job discriminatory treatment or harassment as required by Title VII. Title VII requires a claimant, before filing a lawsuit, to file a charge of discrimination with the EEOC within 300 days of the alleged discrimination. Id.; 42 U.S.C. § 2000e-5(e). The charge must state the basis of the discrimination, e.g., race, sex, religion, disability, and must describe the discriminatory acts. A lawsuit brought pursuant to Title VII is limited to the scope of the EEOC's investigation of the alleged discrimination. Farmer v. ARA Services, Inc., 660 F.2d 1096, 1105 (6th Cir. 1981); EEOC v. Bailey Co., 563 F.2d 439, 446 (6th Cir. 1977).

Defendant is correct that no mention of on-the-job discriminatory treatment or harassment is made in Plaintiff's charge of discrimination. Instead, Plaintiff described the events concerning his termination and, as the "specific action" that Defendant "took against [him]," Plaintiff checked "Discharge." There is no evidence to show that the EEOC went beyond the allegations in Plaintiff's charge and extended its investigation to include on-the-job discriminatory treatment or harassment. Therefore, the EEOC did not investigate this

allegation, and Defendant was not given an opportunity to respond to it. See Tart v. Hill Behan Lumber Co., 31 F.3d 668 (8th Cir. 1994) (Race discrimination charge did not encompass a claim for racial harassment because the harassment claim was "not sufficiently like or related to" the claim of discriminatory discharge); Edmonston v. MGM Grand Air Inc., 808 F. Supp. 197, 202-203 (E.D.N.Y. 1992) (Charge of discrimination concerning failure to promote did not permit plaintiff to proceed with a claim alleging harassment even though plaintiff claimed both harassment and failure to promote were racially motivated). Consequently, this court lacks subject matter jurisdiction over Plaintiff's allegation of on-the-job discriminatory treatment or harassment in violation of Title VII, and the court will consider only the allegation of discriminatory termination.[1]

Plaintiff has presented no direct evidence of racial discrimination. Instead, Plaintiff alleges that he was fired from his job as a flagman and replaced by a "young white man." Defendant's Exhibit C at p. 6. According to Plaintiff, the only other black flagman was fired at the same time. Id. at pp. 6-7. Thus, the court must determine if Plaintiff has raised an inference of discrimination. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Supreme Court established a three-part test for allocating the burden of proof in employment discrimination cases in the absence of intentional discrimination.[2] First, the plaintiff must prove a prima facie case of discrimination by establishing:

> (i) that he belongs to a protected class; (ii) that he was qualified for the job that he held; (iii) that, despite his qualifications, he suffered an adverse employment decision; and (iv) that, after his rejection or demotion, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications or, in the case of termination, he was replaced by a person outside the protected class.

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1 In his deposition, Plaintiff stated that his complaint was based on his -on-the-job treatment and not on his termination. Plaintiff's Depo. at p. 75. However, as previously discussed, the court is limited in its decision by the scope of the charge of discrimination filed by Plaintiff.

2 Claims brought under § 1981, which prohibits racial discrimination in the making and enforcing of private contracts, are analyzed under the Title VII McDonnell Douglas/Burdine framework. See Patterson v. McLean Credit Union, 491 U.S. 164, 186 (1989).

Id. at 802; Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 n.6 (1981). The fourth element may also be established by showing that plaintiff was treated less favorably than similarly situated nonprotected employees. Talley v. Bravo Pitino Restaurant, Ltd., 61 F.3d 1241, 1246 (6th Cir. 1995). See also Braithwaite v. Timken Co., 258 F.3d 488 (6th Cir. 2001) (In order to state a prima facie case of employment discrimination based on a racially motivated termination or disciplinary action, the plaintiff must show that: "(1) he was a member of a protected class; (2) that he suffered an adverse employment action; (3) that he was qualified for the position; and (4) that a person outside the protected class was treated more favorably than him.")

The burden of establishing a prima facie case is not onerous. Burdine, 450 U.S. at 253-54. After the plaintiff proves a prima facie case, the employer has the burden of articulating "some legitimate, nondiscriminatory reason for the employee's rejection." Id. Finally, if the employer is able to carry its burden, then the burden returns to the plaintiff, and he must prove that the reasons offered by the employer were merely a pretext for discrimination rather than the true reasons for the employer's actions. Id. at 804. "The factfinder's disbelief of the reasons put forward by the defendant . . . may, together with the elements of the prima facie case, suffice to show intentional discrimination." St Mary's Honor Center v. Hicks, 113 S. Ct. 2742, 2749 (1993). The plaintiff has the ultimate burden of proving intentional discrimination. Burdine, 450 U.S. at 256.

Here, it is undisputed that Plaintiff was black and that he suffered an adverse personnel decision. However, Defendant has presented the affidavit of General Foreman Vance which states that Plaintiff was terminated because his job performance was unsatisfactory and that white employees whose job performances were unsatisfactory were also terminated. Defendant's Exhibit B at p. 2. The employee who replaced Plaintiff was a permanent employee. Id. In his deposition, Plaintiff admitted that he had no first-hand

knowledge of how other employees of Defendant were treated. Plaintiff's Depo. at pp. 125-26, 151-52, 156.

Fed. R. Civ. P. 56(e) requires that the party opposing summary judgment "must set forth specific facts showing that there is a genuine issue for trial." Thus, conclusory allegations unsupported by specific evidence are insufficient to establish a genuine issue of fact. Mitchell v. Toledo Hospital, 964 F.2d 577, 585 (6th Cir. 1992). Here, Plaintiff's allegations have been refuted by Vance's affidavit, and Plaintiff has presented no evidence or pointed to anything in the record to show that there are disputed issues of fact. The mere fact that Plaintiff was fired, in the absence of supporting evidence, is insufficient to create a disputed issue of fact. ("Q. So you're claiming ... that the fact that you were fired is proof that it was discrimination; is that correct? A. Right. Q. At least relative to your termination, you don't have any further evidence, other than the fact you were fired; is that correct? A. That's right." Plaintiff's Depo. at p. 125) Therefore, Plaintiff has failed to establish a prima facie case of discrimination.

However, even if Plaintiff had established a prima facie case, Defendant has pointed to unrefuted evidence, in the form of Vance's affidavit, which shows that Plaintiff was discharged for a legitimate, non-pretextual reason. Vance states as follows:

> I assigned Mr. Hammond to perform flagging duties. I subsequently observed him performing the duties in an unacceptable fashion. Specifically, I observed cars traveling in both directions at the same time on the single lane road. I also observed Mr. Hammond standing in such a position that a car had to swerve to avoid hitting him.

Defendant's Exhibit B at ¶ 8.

Plaintiff has presented no evidence to dispute the affidavit. Instead, Plaintiff merely contends that Vance never told him what he was doing wrong. Defendant's Exhibit E. Because Defendant has refuted Plaintiff's allegations that he was discharged on the basis of his race, Defendant is entitled to judgment as a matter of law.

Defendant has also moved for sanctions under Fed. R. Civ. P. 11 in the form of dismissal of the action based on Plaintiff's admission in his deposition that he did not read the complaint before he signed it. Plaintiff's Depo. at pp. 103-110. Rule 11 of the Federal Rules of Civil Procedure provides that every pleading, written motion, or other paper being filed be signed by an attorney, if the party is represented, and requires the attorney to certify through signing it "after an inquiry reasonable under the circumstances," that the document "is not being presented for any improper purpose," and that "the claims, defenses and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11(a), (b). The Supreme Court has explained that "the purpose of Rule 11 as a whole is to bring home to the individual signer his personal **nondelegable** responsibility." Pavelic & LeFlore v. Marvel Entertainment Group, 110 S. Ct. 456, 460 (1989) (emphasis added). Pro se litigants must also comply with Rule 11. Danvers v. Danvers, 959 F.2d 601, 604-05 (6th Cir.1992).

In the present case, Plaintiff has clearly violated Rule 11 by signing the complaint without reading it. However, the court has granted Defendant's motion for summary judgment; consequently, Defendant's motion for Rule 11 sanctions is denied as moot.

In summary, Defendant's motion for summary judgment is GRANTED, and Defendant's motion for Rule 11 sanctions is DENIED. The clerk is directed to enter

judgment accordingly.

IT IS SO ORDERED.

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JAMES D. TODD
UNITED STATES DISTRICT JUDGE

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DATE